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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re EDDIE RONELL JONES	G043490
on Habeas Corpus.	(Super. Ct. No. M-12736)
	O P I N I O N

Appeal from judgment of the Superior Court of Orange County, Thomas M. Goethals, Judge. Affirmed.

Edmund G. Brown, Jr., and Kamala D. Harris, Attorneys General, Julie L. Garland, Assistant Attorney General, Julie A. Malone, Jennifer A. Neill and Charles Chung, Deputy Attorneys General for Appellant.

Stephen M. Defilippis, under appointment by the Court of Appeal for Respondent.

* * *

The Governor appeals from a judgment granting a petition for writ of habeas corpus that vacated his October 1, 2009 reversal of the Board of Parole Hearings's (the Board) August 13, 2008 decision finding respondent Eddie Ronell Jones suitable for parole. Upon review, we agree with superior court's conclusion the record does not contain evidence that Jones is currently dangerous and thus shall affirm the judgment.

FACTS AND PROCEDURAL HISTORY

According to the record of the Board's August 2008 parole consideration hearing, Jones's mother suffered from drug abuse and he had no contact with his father until shortly before the commitment offense. Until the age of 5, he lived with his great-grandmother. After she died, he lived with his grandmother until age 11. His grandmother's work schedule made it difficult to properly supervise him, and he was removed from her home and placed in series of foster homes. At the time of the commitment offense he had been living with a girlfriend for a year. Jones had no criminal record before the commitment offense.

In February 1988, Jones, then 17 years old, and Ramon Birl, also a teenager, killed Richard Hopking by bludgeoning him with rocks and a trophy. Hopking was the live-in boyfriend of 16-year-old Rachel C.'s mother. Jones and Birl were acquaintances of Rachel C.

On the day of the murder, Jones and Birl visited Rachel C. at her home. Rachel C. complained to Jones and Birl about Hopking's treatment of her and they offered to "get him out of [her] hair."

As summarized by the presiding commissioner during the parole consideration hearing, while Jones and Birl were outside Rachel C.'s residence, they "'heard Rachel screaming from inside the house. On the way inside the house [Jones and Birl] picked up rocks . . . . Once inside they proceeded to hit the victim on the

head and shoulders . . . . After the victim died, they placed his body in plastic bags and put [the] body in the trunk of the victim's [car] . . . . This was done after they went through the house and cleaned up everything. After driving the victim's car, [Jones] . . . and . . . Birl purchased gasoline with a credit card and Jones signed the victim's name. Later on the car stopped running and they used a . . . phone to call . . . friends to come and pick them up.'"

Jones and Birl were both convicted of second degree murder and Jones was also found guilty of grand theft. The latter offense was later reduced to petty theft.

At his trial, Jones admitted killing Hopking, but claimed he acted in self-defense and to defend Rachel C. He unsuccessfully sought to have Rachel C. granted use immunity so she could testify in his favor. Jones appealed his conviction, in part, asserting the refusal to grant immunity to Rachel C. was error. In an unpublished opinion, this court affirmed Jones's murder conviction. Rejecting his use immunity claim, we described Rachel C.'s statements to the police and district attorney as being "light years away from a showing [her proffered testimony would be] 'clearly exculpatory.'" (*People v. Jones* (May 30, 1991, G009255) [nonpub. opn.], p. 9.)

At the August 2008 parole consideration hearing, Jones gave the following summary of what happened on the day of Hopking's murder. After Rachel C. complained to Jones and Birl about Hopking's treatment of her, he "made" "[i]nappropriate statements . . . trying to impress" Rachel C. and her girlfriend. Convincing Rachel C. to leave home and go live with a friend, Jones and Birl began to help her "take her stuff from the home . . . ." "[O]n my way back to the house . . . I heard Rachel scream. And as soon as she screamed, . . . something in me just made me—I got mad. . . . I was an angry teenager, and that triggered something in me—that anger that was in me. And I ran into the house. And when I [saw Hopking] and [Rachel C.], it looked like they were going . . . towards the bedroom. I ran back out and I picked up the first thing I saw, which was a rock. I grabbed the rock, ran inside, and threatened

[Hopking] with the rock. He was in the bedroom with Rachel [C.] And as soon as he [saw] me he turned around and went to grab the rock. And with the warped way that I was thinking at the age of 17, I immediately felt like I was being threatened and I attacked [Hopking]. And from that point . . . Birl came into the house and he started attacking him as well."

After killing Hopking, "we started panicking . . . . We began to clean up the house, and that's when Rachel [C.] started to scream and say[] she can't leave [Hopking] there. 'We can't stay here. We can't leave it like this.' And so we . . . took the car[,] . . . placed it into the garage, and then we removed [Hopking's] body from the dining area into the car, and then that's when we left the residence."

A Board member asked Jones about "allegation[s] of inappropriate conduct between [Hopking] and Rachel [C.]," to which Jones replied "Rachel [C.] made statements about him looking at her and her being uncomfortable around him. And we took that for more than it probably was worth." Later, he said "today I know differently[;] . . . I don't believe she was in danger. . . . [N]ow I see . . . [Rachel C.] was mad at [Hopking] so she's yelling at him. Even though she was yelling help, she was mad."

Asked "[w]hat were you thinking when this attack was going on," Jones said, "Rage. I remember being angry. I was just angry." A Board member inquired "[h]ow do you feel today about what happened." Petitioner answered, "I am ashamed. I am ashamed of what I have done. It's hard to sit here and talk about it because of the shame and the guilt I feel. And . . . I thought that would pass, but it hasn't. . . . I think that's something that would always be with me. But I talk about it to ensure that I learn from it, and that I never commit any acts of violence again. That's my goal . . . ." A Board member inquired "[w]hat have you learned from it," and Jones said, "I've learned to not hold things in, to express yourself . . . . I express myself now to ensure that little bouts of anger, that doesn't happen anymore. . . ."

Jones further explained "at first, . . . I blamed everybody[.] . . . [W]hen I came to jail . . . I accepted responsibility for the crime, but I didn't fully accept responsibility because I was always saying, 'Well, if this wouldn't have happened I wouldn't have did that,' or 'If that wasn't said, I wouldn't have did that.' When I entered my 20's . . . I stopped pointing fingers at everybody else and started actually looking at myself, that's when the change began. That's when I started really realizing who was at fault and what in me allowed this to happen, allowed me to react this way, allowed me to believe that violence was the only solution to my problems. . . ."

In prison, Jones obtained his general equivalency diploma (GED). He also completed training for welding, air conditioning and refrigeration, and forklift operation, and worked in the prison's furniture factory, receiving praise for his work ethic and skills.

As for his prison behavior, Jones had no record of violence. In October 1994, he received a California Department of Corrections (CDC) 115 serious rule violation that involved attempting to manipulate prison staff by keeping a pair of shoes he was not authorized to possess. Jones also received eight CDC 128 minor misconduct counseling notices, all but one issued before September 1996. He received his last CDC 128 notice in June 2008 for arriving 49 minutes late for a medical appointment. Since 1997 Jones's custody level has been Medium A with a classification score of 19, the lowest possible for an inmate serving a life sentence. Jones submitted statements from two prison officials praising him for his attitude, self-discipline, respect for correctional staff, and rehabilitative efforts.

For self-help, he initially participated in Alcoholics Anonymous and Narcotics Anonymous because those programs were all that was available to him. Subsequently, Jones participated in three anger management courses. Although the 2007 hearing panel had recommended he continue in self-help programs, Jones admitted he had not taken any classes between the date of that hearing and his August 2008 hearing. However, he did read a book entitled, "Loosen That Man," which he described as

depicting "the proper way for a man to act, . . . the way you should carry yourself." Jones also claimed that "every day . . . I try to grow as a person . . . ." He also presented evidence that, if paroled, he could live with his grandmother and had a standing job offer.

The Board reviewed a July 2008 psychological evaluation of Jones. Based on his "cultural background, personal, social and criminal history, institutional programming, community/social support, release plans, and current clinical presentation," the evaluation concluded Jones "poses a low to very low likelihood to become involved in a violent offense if released in the free community." (Bold, underscoring, and italics omitted.) The evaluator also concluded Jones "has explored the commitment offense in depth over his 20 years of incarceration," "fully understands how he got himself into a situation where he believed he was defending his friend and wound up killing a man," was "very clear on the fact that due to his young age and impulsivity and 'anger at the world,' he was more likely at the time . . . to jump to equivocal conclusions about an ambiguous situation," and "stated, rather eloquently how, at the time of the offense, he believed he had only one option: aggression," but "[n]ow he sees a myriad of options available to him in dealing with other people, situations, conflicts and misunderstandings . . . ."

The 2008 evaluation summarized the results of Jones's six prior evaluations, dating back to 1990. At the hearing, the Board acknowledged "the prior evaluations . . . have been fairly positive for some time now." This comment included Jones's 2003 evaluation that found he presented "'antisocial and dependent features[]' . . . for future dangerousness," but nonetheless placed him "in the low risk category" for "future risk" of potential violence.

A representative from the Orange County District Attorney's Office appeared at the hearing. She acknowledged Jones "is a very compelling figure" who had "done everything that the Board has asked him to do on past occasions, and it would appear that he's come pretty close this time, although we are a little concerned that he

kind of fell on the self-help stuff in the last year." She described the office's position as "a soft opposition" to granting Jones parole.

The Board found Jones suitable for parole. In a January 2009 ruling, the Governor reversed the Board's decision. Jones challenged the Governor's ruling by filing a petition for writ of habeas corpus in the superior court. (*In re Jones* (Super. Ct. Orange County, 2009, No. M-12348).) On September 1, the superior court vacated the Governor's decision, but remanded the case to him for review in light of the Supreme Court's decision in *In re Lawrence* (2008) 44 Cal.4th 1181.

On October 1, the Governor issued a new ruling again reversing the Board's decision. The Governor found Jones's commitment offense "especially atrocious," noting the victim "was abused and defiled" and "particularly vulnerable" due to his age and being unarmed. He also cited Jones's prison behavior, claiming Jones had suffered a CDC 115 violation in 1999 and describing the June 2008 CDC 128 counseling notice as "misconduct." Another factor the Governor cited was Jones's purported "lack of insight" and failure to accept responsibility for the commitment offense by "consistently minimiz[ing] his conduct in the crime over the years" and providing explanations that "differed in significant respects from witness accounts and the appellate record." Finally, the Governor also claimed Jones had only made "minimal efforts to seek self-help therapy to enhance his ability to function within the law upon release."

Jones filed the current habeas corpus petition challenging the October 1 ruling. The superior court again vacated the Governor's decision. In rejecting it, the court noted "the aggravated circumstances of a commitment offense" cannot support denial of parole unless "there is 'something in the prisoner's pre- or post-incarceration history, or his or her current demeanor' that provides 'some evidence of current dangerousness to the public'" (underscoring omitted), and here "there [wa]s no evidence in the record supporting the Governor's conclusion." This time, the court directed the Board's August 2008 parole suitability decision be reinstated.

DISCUSSION

1. Introduction

On appeal, the Attorney General, summarizes only the evidence relevant to the commitment offense and the procedural background of the case, but relies on Jones's "recent misconduct, lack of insight, attempts to minimize his violent conduct, and minimal efforts in self-help therapy" to argue "the Governor's [parole reversal] decision satisf[ies] the some-evidence standard . . . ." Jones contends the order reinstating the Board's parole suitability decision should be affirmed because his commitment offense, alone, no longer supports a finding of current dangerousness, and the other unsuitability factors cited by the Governor are either factually incorrect or lacking support in the record.

Initially, we note that, while the Governor is entitled to appeal from the order granting relief in habeas corpus (Pen. Code, § 1507), the California Rules of Court require appellate briefs to comply with the rules governing criminal appeals. (Cal. Rules of Court, rule 8.388(a).) Here, the opening brief's limited summary of the appellate record fails to comply with the requirement that it contain "a summary of the significant facts." (Cal. Rules of Court, rules 8.204(a)(2)(C); 8.360(a); see *In re S.C.* (2006) 138 Cal.App.4th 396, 402.) However, the record contains no indication the trial court received or considered any oral testimony. In light of the fact "the trial court's findings were based solely upon documentary evidence, we independently review the record" on appeal. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 677.)

2. Background

Penal Code section 3041, subdivision (b) declares the parole board "shall set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is

such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed . . . ." Under the applicable regulations, "a life prisoner shall be found unsuitable for and denied parole if in the judgment of the [Board] the prisoner will pose an unreasonable risk of danger to society if released from prison." (Cal. Code Regs., tit. 15, § 2402, subd. (a).)

In determining an inmate's suitability for parole, the Board shall consider "[a]ll relevant, reliable information available," including "the circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release." (Cal. Code Regs., tit. 15, § 2402, subd. (b).) One of the circumstances "tend[ing] to indicate unsuitability for release" is whether "[t]he prisoner committed the [commitment] offense in an especially heinous, atrocious or cruel manner." (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1).)

In re Rosenkrantz, supra, 29 Cal.4th 616 held "the judicial branch is authorized to review the factual basis of a decision by the Board or Governor denying parole in order to ensure that the decision comports with the requirements of due process of law, but that in conducting such a review, the court may inquire only whether some evidence in the record before the Board supports the decision to deny parole, based upon the factors specified by statute and regulation." (*Id.* at p. 658.) *Rosenkrantz* also recognized "the 'some evidence' standard is extremely deferential and reasonably cannot be compared to the standard of review involved in undertaking an independent assessment of the merits or in considering whether substantial evidence supports the

findings underlying a . . . decision." (*Id.* at p. 665.) "Resolution of any conflicts in the evidence and the weight to be given the evidence are within the authority of the Board [or Governor]. [Citation.]" (*Id.* at p. 656.) Furthermore, "the precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the Governor [or Board]," and "[i]t is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole. As long as the . . . decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, the court's review is limited to ascertaining whether there is some evidence in the record that supports the . . . decision." (*Id.* at p. 677.)

In *In re Lawrence, supra,* 44 Cal.4th 1181, the Supreme Court clarified the application of the "some evidence rule" as it relates to the Board or Governor's decision to deny parole. Noting "the Penal Code and corresponding regulations establish that the fundamental consideration in parole decisions is public safety," and "the core determination of 'public safety' under the statute and corresponding regulations involves an assessment of an inmate's *current* dangerousness" (*id.* at p. 1205), the court held "if we are to give meaning to the statute's directive that the Board *shall normally* set a parole release date [citation], a reviewing court's inquiry must extend beyond searching the record for some evidence that the commitment offense was particularly egregious and for a mere *acknowledgement* by the Board . . . that evidence favoring suitability exists. Instead, under the statute and the governing regulations, the circumstances of the commitment offense (or any of the other factors related to unsuitability) establish unsuitability if, and only if, those circumstances are probative to the determination that a prisoner remains a danger to the public" (*id.* at p. 1212). Thus, "[i]t is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public. [¶] Accordingly, when a court reviews

a decision of the Board . . ., the relevant inquiry is whether some evidence supports the *decision* of the Board . . . the inmate constitutes a current threat to public safety, and not merely whether [it] confirms the existence of certain factual findings. [Citations.]" (*Ibid*.)

3. Analysis

We conclude the trial court properly vacated the Governor's reversal of the Board's parole suitability decision.

While the record supports the Governor's conclusion Jones committed an "especially atrocious" commitment offense, that fact alone cannot support his ruling. The Supreme Court has noted "although the Board and the Governor may rely upon the aggravated circumstances of the commitment offense as a basis for a decision denying parole, the aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner's pre- or postincarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative of the statutory determination of a continuing threat to public safety." (*In re Lawrence, supra,* 44 Cal.4th at p. 1214.)

Neither do the other factors cited by the Governor support his ruling. As for Jones's institutional behavior, the trial court noted the Governor misstated the record, citing to a nonexistent 1999 CDC 115 violation and erroneously describing his June 2008 failure to timely report for a medical appointment as "'illegal behavior.'"

The Governor also claimed Jones "lacks full insight into the circumstances surrounding the murder because he has consistently minimized his conduct in the crime over the years" and given "explanations for the murder . . . differ[ing] in significant respects from the witness accounts and the appellate record. These claims are based on

past statements and ignore both the existence and the significance of Jones's most recent discussion of the commitment offense and his changes in understanding and attitude.

"[E]xpressions of insight and remorse will vary from prisoner to prisoner and . . . there is no special formula for a prisoner to articulate in order to communicate that he or she has gained insight into, and formed a commitment to ending, a previous pattern of violent behavior." (*In re Shaputis* (2008) 44 Cal.4th 1241, 1260, fn. 18; *In re Twinn* (2010) 190 Cal.App.4th 447, 465.) Jones's comments at the 2008 parole consideration hearing reflect he has accepted responsibility for Hopking's murder, plus explained the change in his attitude from one who was angry and blamed others for his actions to one who accepted personal responsibility for what occurred. He also discussed his efforts to change the manner in which he deals with conflict to avoid becoming violent in the future.

As noted the Governor's findings are based on Jones's prior statements, both at his trial, and in prior psychological evaluations. But "[t]here is no minimum time requirement. Rather, acceptance of responsibility works in favor of release '[no] matter how longstanding or recent it is,' so long as the inmate 'genuinely accepts responsibility . . . .' [Citation.]" (*In re Elkins* (2006) 144 Cal.App.4th 475, 495, quoting *In re Lee* (2006) 143 Cal.App.4th 1400, 1414.) In addition, "an inmate need not agree or adopt the official version of a crime in order to demonstrate insight and remorse. [Citation.]" (*In re Twinn, supra,* 190 Cal.App.4th at p. 466; see also *In re Palermo* (2009) 171 Cal.App.4th 1096, 1110-1112, disapproved on another ground in *In re Prather* (2010) 50 Cal.4th 238, 252-253.) While the Governor is free to make credibility determinations contrary to those reached by the Board and we must defer to the Governor's findings in this respect, "[h]ere, the Governor did not suggest any doubt of [Jones's] sincerity" at the 2008 hearing. (*In re Elkins, supra,* 144 Cal.App.4th at p. 495.) Viewing Jones's statements as a whole, we conclude the record does not support the

Governor's finding he continues to minimize his criminal activity and has failed to assume responsibility for the harm he inflicted.

This case is unlike *In re Taplett* (2010) 188 Cal.App.4th 440 and *In re Loveless* (2011) 192 Cal.App.4th 351, cited by the Attorney General. In *Taplett* the appellate court affirmed the Governor's decision to reverse the Board's parole suitability finding based on the conclusion the inmate lacked insight where, "[d]espite having entered a plea to second degree murder, with the requisite element of an intentional killing" (*In re Taplett, supra,* 188 Cal.App.4th at p. 450), the inmate "continue[d] to deny she had any such intent" (*ibid*.). In *Loveless*, the court affirmed a refusal to grant parole, finding "[t]here was some evidence supporting the Board's findings that defendant had insufficient insight into the psychological and emotional factors that led him to commit the murder and robbery, that he needed additional self-help, and his parole plans were insufficiently conceived and developed," and "[t]hese factors combined with the egregiousness of the commitment offense [to] provide[] a rational nexus between those findings and the Board's finding of current dangerousness." (*In re Loveless, supra,* 192 Cal.App.4th at p. 364.)

Finally, citing what he described as "a limited number of self-help courses in relation to the period of his incarceration" and Jones's failure to participate in any group therapy courses between the 2007 and 2008 parole consideration hearings, the Governor claimed he was "troubled by Jones's minimal efforts to seek self-help therapy to enhance his ability to function within the law upon release." But, by focusing exclusively on the limited number of Jones's self-help programs participation, the Governor's finding ignores both Jones's overall efforts at self-improvement and the quality of the programs. The Board cited Jones's "participation [in] educational programs, self-help, vocational programs, [and] institutional job assignments" "[w]hile in prison," noting all had "enhanced [his] ability to function within the law upon release . . . . " The Governor gave no acknowledgement to Jones's achievements in

educational and vocational programs, nor his prison employment and positive attitude. The Board also relied on Jones's self-help participation that included "Creative Conflict Resolution, Anger Management," and "a 180-hour program, [named] Learning Information for Empowered Rehabilitation." While the programs were "not exorbitant as far as . . . self-help goes," the programs were "quality self-help . . . ." In addition, although there was no evidence Jones has suffered from substance abuse, he participated in Alcoholics Anonymous and Narcotics Anonymous as a way of obtaining self-help therapy.

Since the record fails to support the existence of some evidence supporting the Governor's reversal of the parole suitability decision, the trial court properly vacated the Governor's ruling and reinstated the Board's ruling.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

O'LEARY, J.

ARONSON, J.